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8 UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
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10 In re: Case No.: 10-12372  
11 LYZA CHAVEZ Chapter 13  
12 Debtor DATE: December 20, 2010  
13 \_\_\_\_\_/ TIME: 10:00 a.m.  
COURT: Santa Rosa

14 **TEDESCHI HEARING BRIEF IN SUPPORT OF**  
15 **OBJECTION TO CONFIRMATION AND LIEN AVOIDANCE**

16 There are two issues before the court at this hearing:

- 17 1. Confirmation of the Debtor's amended plan.  
18 2. The Debtor's motion to strip down Tedeschi's lien.

19 **Objection to Confirmation of Amended Plan**

20 Tedeschis have filed an objection to the Debtor's plan (Docket  
21 No. 25), and an objection to the amended plan (Docket No. 35:  
22 "Supplemental Objection to Confirmation of Plan"). In response to  
23 Tedeschis' initial objection to the plan (contending that the plan  
24 did not adequately provide for the secured claim, and that it was  
25 not feasible) the Debtor filed an amended plan, that is on for  
26 confirmation at this hearing.

27 The amended plan provides that the Tedeschi lien shall be paid  
28 off, with interest, over the life of the plan. As noted, in

1 Tedeschis' Supplemental Objection, the amended plan does not  
2 provide terms for this repayment over the life of the plan. As  
3 such, the amended plan is illusory. The note is due and payable  
4 in full at this time. Tedeschis contend that in order to meet the  
5 requirements of Section 1325(a)(5) the plan must specifically  
6 provide for the payment terms, for paying the full amount of the  
7 allowed secured claim over the term of the plan. How else could  
8 the court determine whether the Debtor will be able to make all  
9 payments under the plan (Sec. 1325(a)(5)(C)?

10 Veronica Tedeschi has filed a declaration in support of her  
11 objection to the plan. Therein she states the current amount owed  
12 under the note and deed of trust, as of the date of the hearing,  
13 December 20, 2010. That amount will increase with the additional  
14 attorney fees and appraiser fees for this proceeding. Tedeschis  
15 contend that their claim is fully secured, and their appraiser  
16 supports this contention with his valuation of the property at  
17 \$250,000. Were the Tedeschi secured claim, to be paid through the  
18 plan, to be in the amount of \$240,000, then in order to pay that  
19 claim, with interest, over the remaining life of the plan  
20 (approximately 54 months), monthly payments would have to be  
21 \$5,593.

22 Debtor's appraiser finds the value of the property to be  
23 \$145,000. Even if the value were that low, and thus Tedeschis'  
24 secured claim was stripped down that amount, then the monthly  
25 payments required to pay off the secured claim, with interest, over  
26 the remaining 54 month term of the plan would be \$3,380.

27 Debtor's income does not support her ability to make monthly  
28 payments to Tedeschi of \$5,593, nor even of \$3,380.

1 Based upon the foregoing, Tedeschis respectfully submit that  
2 the amended plan does not adequately provide for satisfaction of  
3 Tedeschis' secured claim, and confirmation must be denied.

4 (It should be noted that Debtor's original plan had provided  
5 that the Tedeschi secured claim, as stripped down, would be paid in  
6 full by the sale of the property to a third party. As stated in  
7 Tedeschis' objection to that plan, it is not reasonable to believe  
8 that any third party will pay cash to purchase property encumbered  
9 by a stripped down lien, when the lien will continue to attach to  
10 the property, in its full amount until the plan is completed, years  
11 from now. This sale to a third party provision, in the original  
12 plan, has been dropped from the amended plan.)

13 **Objection to Stripping Down of Lien**

14 The court's determination of the value of the subject  
15 property, in light of the testimony of the two appraisers, will  
16 determine the outcome of this issue. However, as stated above,  
17 regardless of whether the lien is stripped, the plan is not  
18 feasible.

19 Tedeschis object to admissibility of the letter from David  
20 Neft, real estate broker at Neft & Neft, which gives his opinion of  
21 the value of the subject property. This letter was filed in  
22 support of the Debtor's motion to strip the lien. Tedeschis move  
23 the court to strike this letter from the record.

24 Respectfully submitted,

25 Dated: December 14, 2010

26 /s/ Ray H. Olmstead  
27 Ray H. Olmstead, Attorney  
28 for Tedeschis